

# END-USER SOFTWARE LICENSE AGREEMENT REGARDING ACADEMIC AND RESEARCH USE OF HAWC2 and HAWCStab2

Subject to Licensee's registration with Licensor of a User who shall be authorized to accept the terms of this Software License Agreement (hereinafter the "Agreement") on behalf of Licensee, Licensee agrees to be bound by the terms of this Agreement, effective as of User's acceptance of this Agreement by checking the terms and condition box and by clicking the submit button ("Effective Date").

**Whereas** employees of DTU Wind Aand Energy Systems have developed software called HAWC2 and HAWCStab2. HAWC2's main features are time domain simulations of integrated aerodynamic, structural and hydrodynamic loads of a wind turbine. HAWCStab2's main features are the computation of natural frequencies, damping, and mode shapes of structural and aeroelastic modes of isolated wind turbine blades, or complete traditional upwind wind turbines;

**Whereas** this software has been developed on basis of DTU Wind and Energy System's extensive research within the field of wind energy;

**Whereas** Licensee wants to obtain an end-user research license to the HAWC2 and HAWCStab2 Software and DTU Wind Energy is willing to grant such license;

**Now**, therefore the Parties have agreed as follows:

## 1. Definitions

1.1. In this Agreement the following definitions are used:

**"Licensee"** shall mean the legal entity on behalf of which the registered User accepts the terms of this Agreement.

**"Licensor"** shall mean Technical University of Denmark, Department of Wind and Energy Systems, DTU Wind, Risø Campus, Frederiksborgvej 399, DK-4000 Roskilde, CVR no. 30 06 09 46, (also referred to as "DTU").

**"Software"** shall mean the computer program named HAWC2 in executable code capable of operating on a PC under the operative system Windows 10, and the computer program named HAWCStab2 in executable code capable of operating on a PC under the operative system Windows 10. Both computer programs as a combined package will hereinafter be referred to as the Software.

**"Documentation"** means the manuals named "How to HAWC2 – The user's guide" and "HAWCStab2 User Manual".

## 2. License

- 2.1. Licensor hereby grants to Licensee a non-exclusive, non-transferable and non-assignable end-user license to use Software (in compiled, executable form) and Documentation for internal non-commercial research and education purposes only. The Software may not be used for any commercial or non-academic activities.
- 2.2. If Licensee has obtained an "Institutional license", cf. Section 5.1, the license granted according to Section 2.1 is a multiple-user multiple-pc license. The Software can be installed on any number of computers, restricted to computers located at and notebooks registered at Licensee's premises, as indicated by Licensee's registered address, to which it is locked using a license manager. The Software may not be used on any other computer.
- 2.3. The license granted according to Section 2.1 is a single-user single-pc license. The Software can be installed on a computer owned or controlled by Licensee, to which it is locked using a license manager. Licensee can therefore only use the Software on a computer owned and used by Licensee. The Software may not be used on any other computer.
- 2.4. Licensee is not allowed to sell, assign, distribute, sub-license, rent, lease, lend, or in any other way transfer or assign Software and Documentation, or any of the rights or obligations granted by Licensor to Licensee under this Agreement to any third party without the prior written approval of Licensor. Licensor may give such approval at its own discretion.
- 2.5. Except to the extent permitted by applicable mandatory law, Licensee is not allowed to make copies of, reproduce, modify or further develop the Software, merge the Software with any other software, or in any way create derivative works or modified versions of the Software. Licensee may install, load, display, run and make necessary back-up copies of the Software subject to and in accordance with the provisions of this Agreement. Licensee shall not be entitled to reverse engineer, reverse assemble, disassemble or decompile the Software, or otherwise attempt to derive the source code of the Software.
- 2.6. Licensee may not provide, disclose, demonstrate or otherwise make available the Software or Documentation to any third party, or sub-license the Software to third parties. Licensee undertakes not to let any third party get access to or to use the Software or Documentation, either in executable form or as "software as a service", without approval from Licensor. Licensee is not allowed to use the Software to provide any services, general consultancy or training for any third party, or sell, lease, rent, transfer, hire-out, license, sub-license, assign, distribute, publish, commercially exploit, or otherwise deal with the Software, or have any software written or developed that is based on or derived from the Software.
- 2.7. All rights to Software or Documentation not explicitly mentioned or granted in this Agreement are reserved by Licensor. The license does not include any third party software which may be needed to run/operate the Software, and it is Licensee's own responsibility to obtain necessary third party licenses.
- 2.8. The Software may only be used within the context of publicly funded research and education activities. In case said activities result in publicly available reports, conference or journal article,

the HAWC2 and/or HAWCStab2 developers (to be contacted at [hawc2@windenergy.dtu.dk](mailto:hawc2@windenergy.dtu.dk)) must be offered the opportunity to review said reports/articles before submission.

- 2.9. Licensee remains fully responsible at all times for all acts and omissions of anyone it allows to use the Software and for ensuring such person understands and observes this license. If Licensee has obtained an "Institutional license", cf. Section 5.1, Licensee has the responsibility for its users' (including, without limitation, its employees', students' and visiting researchers') observance of obligations at least corresponding to the obligations of Licensee as laid down in this Agreement.
- 2.10. Licensee shall maintain reasonable records indicating the location of the installation or the individual user of the Software. Licensee shall at all times maintain adequate security measures to safeguard the Software from unauthorized access, use and disclosure. Licensee shall supervise and control access to and use of the Software in accordance with the provisions of this Agreement. Licensee shall inform Licensor immediately of any infringements of the Software, which Licensee suspects or ascertains. Licensee shall to a reasonable extent assist Licensor with technical advice and other non-financial assistance, evidence and documentation concerning infringements.

### **3. Copyright and Intellectual Property Rights**

- 3.1. Software and Documentation is protected by the Danish Copyright Act and international treaties and conventions on the protection of copyright and other relevant legislation on intellectual property rights and copyright. Section 36, subsection 1, no. 1, of the Danish Copyright Act does not apply to this Agreement, and thus Licensee is not allowed to make copies of or make any changes to the Software, except as explicitly set out in this Agreement.
- 3.2. Licensor holds all copyright and any other rights, including intellectual property rights and ownership rights, to Software and Documentation including all copies thereof. This Agreement does not imply any transfer of intellectual property rights pertaining to the Software or Documentation.
- 3.3. Licensee is not allowed to change or remove any marks or notices regarding copyright, trademarks or the like on Software or Documentation or copies thereof.

### **4. Delivery**

- 4.1. Licensor will deliver the Software, including the license manager, and the Documentation to Licensee, when Licensee has accepted the terms of this Agreement.

### **5. License fee**

- 5.1. The license under this Agreement shall be provided at no license fee.

### **6. Support, updates and e-learning**

- 6.1. Licensor shall have no obligation to upgrade, update, bug-fix, to provide support or maintenance services, or to provide assistance or consultancy services in relation to the Software. Any support to Licensee shall be subject to the Parties entering into a separate agreement concerning

such work, subject to DTU's standard terms for commercial work, and will be charged according to the standard DTU rate for commercial work.

- 6.2. Licensor provides e-learning to Licensee by the DTU Learn platform which is a learning management system that facilitates online courses. Licensee is in total entitled to 1 (one) user account to participate in the HAWC2 e-learning course offered by Licensor.

## **7. Term and termination**

- 7.1. This Agreement will come into force on the Effective Date.
- 7.2. This Agreement shall remain in force for 12 months or until terminated by written notification from either Party with one (1) month's prior written notice to the other Party.
- 7.3. If a Party is in breach of any of its obligations under this Agreement, and such breach is considered material according to Danish law, the non-breaching Party may terminate this Agreement. However, before such termination the non-breaching Party shall notify the Party in material breach hereof and request that such material breach is remedied within 30 calendar days. If the breach has not been remedied within the above time period or remedy is impossible, the non-breaching Party may terminate this Agreement without further notice.
- 7.4. In case of expiry or termination of the Agreement, regardless of the reason for termination, the license granted by Licensor shall automatically terminate without further notice, and Licensee undertakes to immediately cease any further use of the Software and Documentation, and to delete or destroy all copies of Software and Documentation and to confirm this by sending a written declaration to Licensor.
- 7.5. Termination of this Agreement for any reason shall not affect the rights and obligations of the Parties accrued before termination, including any right to claim damages. The rights and obligations of the Parties regarding termination, liability, confidentiality and settlement of disputes shall survive any termination of this Agreement indefinitely.

## **8. Liability**

- 8.1. The Software and Documentation is provided "as is" and in the present version at the Effective Date. Any express or implied warranties, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose are disclaimed. The Software is delivered without warranties or guarantee of any kind, to the fullest extent permitted by applicable law. Without limiting the scope of the preceding, Licensor gives no warranty or guarantee that the Software will meet Licensee's requirements, or that any errors and/or defects in the Software can or will be corrected.
- 8.2. Licensee acknowledges and agrees that software in general is not error-free and that the existence of any errors in the Software shall not constitute a breach of this Agreement by Licensor. Licensor does not warrant that the Software shall be free from viruses, and Licensee acknowledges and agrees that it is solely Licensee's responsibility to conduct appropriate virus scanning of the Software prior to installation and use.
- 8.3. Except in the event that such damages are attributable to intentional acts or gross negligence on the part Licensor, Licensor cannot be held liable for any loss or damage whatsoever caused by the Software or Documentation, or which may arise in connection with Licensee's use of Software and Documentation, including but not limited to the potential infringement of any third

party intellectual property rights. In any event, Licensor's aggregate liability to Licensee for damages concerning performance or nonperformance by Licensor or in any way related to this Agreement will for the term of the Agreement be limited to an amount equal to any license fees received by Licensor from Licensee for the Software preceding the occurrence of such liability, or DKK 100,000, whichever is lower. Licensor shall not in any event be liable for any indirect, special or consequential loss, howsoever arising, including but not limited to any loss of profit, revenue, or anticipated savings, or future business; any loss of or damage to data; any damage to reputation or goodwill; any loss of use or loss of contracts with third parties; even if such loss or damage was reasonably foreseeable or Licensee had been advised of the possibility of the same arising.

- 8.4. Licensee shall indemnify and hold harmless Licensor from and against any and all liability, including, but not limited to, demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Licensee's acts or omissions arising from or relating to this Agreement or Licensee's use of the Software or Documentation, including any claims based on product liability laws.
- 8.5. If a Party has breached this Agreement, and such breach is considered material according to Danish law, the non-breaching Parties may terminate this Agreement. However, before such termination the non-breaching Party shall notify the Party in material breach hereof and request that such material breach is remedied within 30 calendar days. If the breach has not been remedied within the above time period or remedy is impossible, the non-breaching Party may terminate this Agreement without further notice.
- 8.6. No Party shall be in breach of this Agreement for any delays, interruption or failure to perform its obligations if the delay, interruption or failure is caused by force majeure or events beyond its reasonable control, which such Party could not reasonably be expected to have taken into account or foresee at the signature of the Agreement. Force majeure includes strikes, lockout and epidemic diseases, including quarantine and isolation imposed by the authorities as a consequence hereof. The Parties agree that a Party's inability to perform its obligations under the Agreement which has been caused by government intervention or other circumstances related to the COVID-19 pandemic, current or future, shall be treated as a force majeure event. Consequently, such inability shall not constitute material breach, and said Party shall not be liable for damages caused by i.e. delays related to the above-mentioned force majeure event.
- 8.7. A Party invoking exemption from liability due to force majeure or a force majeure event must notify the other Party hereof without delay. Such notice shall contain information about the nature hereof, its estimated duration and information pertaining to its consequences. The Parties shall enter into negotiations in order to re-schedule the obligations under this Agreement. Have the Parties been unsuccessful in reaching a solution hereto, the other Party shall be entitled to terminate the Agreement without prior notice, provided, however, that the force majeure event lasts more than 90 calendar days. In the event of termination of the Agreement due to force majeure, Sections 7.4-7.5 pertaining to termination shall apply mutatis mutandis.

## 9. Confidentiality

- 9.1. Licensee agrees that the Software and Documentation shall be treated and handled as Licensor's Confidential Information. Licensee shall not disclose the Software or Documentation or any other confidential information disclosed by or received from Licensor to any third party without the prior written approval from Licensor.

- 9.2. The duty of confidentiality pursuant to this Section 9 shall survive the termination of this Agreement, without limitation in time. Termination of this Agreement shall not release Licensee from the obligations set out in this Section, regardless of the reason for its termination.

#### **10. Severability**

- 10.1. If any section of this Agreement is deemed unenforceable or invalid for any reason, the remaining parts of this Agreement shall not be affected hereby. The Parties shall enter into negotiations for the purpose of substituting such section with a corresponding valid and enforceable wording, if possible.

#### **11. Settlement of Disputes, Governing Law and Venue**

- 11.1. This Agreement shall be governed by the laws of Denmark. This applies whether or not international private law and choice of law rules may lead to the application of another country's laws.
- 11.2. Should a dispute arise between the Parties in connection with this Agreement, including its interpretation and use, the Parties shall enter into negotiations in good faith in order to solve the dispute.
- 11.3. Have the Parties been unsuccessful in solving the dispute within 30 calendar days after initiation of negotiations hereof, the Parties may agree to refer the dispute to mediation at Mediationsinstituttet ([www.mediationsinstituttet.dk](http://www.mediationsinstituttet.dk)) according to its rules.
- 11.4. If the Parties do not agree to mediation within 7 calendar days after expiry of the deadline set forth in Section 11.3, or has no solution to the dispute been reached 30 calendar days after commencement of mediation with Mediationsinstituttet, the dispute shall be settled by the District Court of Lyngby, Denmark, as the court of first instance.

END OF LICENSE TERMS